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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 09/769,157 | 01/24/2001 | Edward O. Clapper | 42390P10898 | 5252 |
| 21906 | 7590 | 05/23/2005 | EXAMINER | |
| TROP PRUNER & HU, PC 8554 KATY FREEWAY SUITE 100 HOUSTON, TX 77024 | | | RAMAKRISHNAIAH, MELUR | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2643 | |

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/769,157 | CLAPPER, EDWARD O. | |
| | Examiner | Art Unit | |
| | Melur Ramakrishnaiah | 2643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 December 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 and 57-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-20, 57-60, 70-75 is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 61-66, are rejected under 35 U.S.C 102(e) as being anticipated by Honma (JP 2000-312323).

Regarding claim 61, Honma discloses a method comprising: storing a clip of the media stream at a first time, at a time latter than the first time, finding two blocks (this is implied as the recording consists of blocks of data) of content in the media stream based on the identification of media stream, the two blocks including the clip, comparing the two blocks (fig. 1, abstract and fig. 4-5, paragraphs: 0025-0028).

Regarding claims 62-66, Honma further teaches the following: finding two blocks (this is implied as the recording consists of blocks of data) includes comparing the clip against the media stream after the media stream has been stored, storing the two blocks, based on comparison selecting better of the blocks, discarding the block that was not selected, storing the one or more blocks includes identifying a start point and an end point of a given block in the media stream and storing the media stream from the start point to the end point (fig. 1, abstract and fig. 4-5, paragraphs: 0025-0028).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 67-68, are rejected under 35 U.S.C. 103(a) as being unpatentable over Honma in view of Hasegawa et al. (US PAT: 6,570,080, filed 5-18-2000, hereinafter Hasegawa).

Regarding claims 67-68, Honama does not teach the following: identifying the block corresponding to the clip and obtaining the block from a source which different than the media stream, obtaining the block from a on-line retailer.

However, Hasegawa teaches the following: identifying the block corresponding to the clip and obtaining the block from a source which different than the media stream, obtaining the block from a on-line retailer (col. 2 lines 38-67, col. 3 lines 1-53).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Honma's system to provide for the following: identifying the block corresponding to the clip and obtaining the block from a source which different than the media stream, obtaining the block from a on-line retailer as this arrangement would facilitate the user to obtain media content from the alternate sources as taught by Hasegawa, thereby providing user with choices.

4. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Honma in view of Kim et al. (US PAT: 6,163,508, hereinafter Kim).

Regarding claim 69, Honma does not explicitly teach the following: during play of a particular block at a point after the start of a the particular block, receiving a signal to record the clip.

However, Kim discloses recording method having temporary buffering which teaches the following: during play of a particular block at a point after the start of a the particular block, receiving a signal to record the clip (fig. 1, col. 4 lines 2-4, and fig. 2).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Honma's system to provide for the following: during play of a particular block at a point after the start of a the particular block, receiving a signal to record the clip as this arrangement would facilitate the user to record the music after listening to it for a while, thus facilitating the user to selectively record music that satisfies his/or her taste.

2. Claims 1-20, 57-60, 70-75 are allowed.

Response to Arguments

3. Applicant's arguments filed on 12-30-2004 with respect to claims 61-69 have been fully considered but they are not persuasive.

Regarding rejection of independent claim 61 under 35 U.S.C 102(b) as being anticipated by Honma, Applicant argues that "Honma fails storing a clip of media stream at a first time, and latter finding two blocks of content including the clip, the finding of content blocks based on the identifying the clip in the media stream. Honma uses an electronic programming guide (EPG) to retrieve rebroadcast of the same program. Thus, in Honma if there is subsequent recording, it is the result of finding

information in the EPG. For at least these reasons, Honma does not anticipate claim 61, or claims dependent thereon". Regarding this, Examiner does not agree with the applicant's interpretation of the Honma reference. Honma reference clearly teaches storing clip of media stream at a first time, if for some reason this is not completed due to power failure or bad reception, it is again recorded at a latter rebroadcast time. Then the system compares the content of the earlier recorded with latter recorded content, which consists of blocks of data (abstract). The EPG is used to determine the time of rebroadcast. Since Honma still reads on applicant's amended claim 61, the rejection of independent claim 61 is maintained. Rejection of dependent claims 62-69 is also maintained as set forth in the office action above.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2643

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melur Ramakrishnaiah whose telephone number is (571)272-8098. The examiner can normally be reached on 9 Hr schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Melur Ramakrishnaiah
Primary Examiner
Art Unit 2643